

AMENDED IN ASSEMBLY FEBRUARY 11, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1588**

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**Introduced by Assembly Members Bass, Lieu, and Nava**

September 9, 2009

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An act to *amend Section 2923.5 of, and to add Article 1.7* (commencing with Section 2946) to Chapter 2 of Title 14 of Part 4 of Division 3 of the Civil Code, relating to mortgage defaults, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 1588, as amended, Bass. Monitored Mortgage Workout Program.

(1) Upon a breach of the obligation of a mortgage or transfer of an interest in property, existing law requires the trustee, mortgagee, or beneficiary to record in the office of the county recorder wherein the mortgaged or trust property is situated, a notice of default, and to mail the notice of default to the borrower named on the mortgage instrument. Existing law requires the notice to contain specified statements, including, but not limited to, those related to the borrower's legal rights, as specified.

This bill would establish the Monitored Mortgage Workout (MMW) Program that would be offered to all borrowers to provide them with an opportunity to explore options to avoid foreclosure. This bill would require that any notice of default of a residential real property, as defined, sent to a borrower include a notice of the borrower's right to participate in the MMW Program as well as the documents that authorize the borrower to elect to participate in the MMW Program. This bill would ~~authorize the California Housing Finance Agency provide for the appointment, by the Governor, subject to confirmation by the Senate,~~

*of an administrator to administer implement the MMW Program. This bill would require the administrator of the MMW Program to provide quarterly reports to the Legislature with specified information regarding the performance of the MMW Program.*

This bill would provide that, if a borrower elects to participate in the MMW Program, no further action to foreclose upon the property may be instituted until the completion of the borrower's participation in the MMW Program.

(2) This bill would declare that it is to take effect immediately as an urgency statute.

Vote:  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     *SECTION 1. Section 2923.5 of the Civil Code is amended to*  
2     *read:*

3     2923.5. (a) (1) A mortgagee, trustee, beneficiary, or authorized  
4     agent may not file a notice of default pursuant to Section 2924  
5     until 30 days after initial contact is made as required by ~~paragraph~~  
6     *paragraphs (2) and (3) or 30 days after satisfying the due diligence*  
7     *requirements as described in subdivision (g).*

8     (2) (A) *A mortgagee, beneficiary, or authorized agent shall*  
9     *inform the borrower, via certified mail accompanying a notice of*  
10    *delinquency, that the borrower may request to participate in the*  
11    *Mediated Mortgage Workout Program under Article 1.7*  
12    *(commencing with Section 2946) of this title. The notice shall*  
13    *include, in bold font, the telephone number, e-mail address, and*  
14    *Internet Web site for the administrator of the Mediated Mortgage*  
15    *Workout Program.*

16    (B) (i) *A borrower shall have 30 days from receipt of the notice*  
17    *to request participation in the Mediated Mortgage Workout*  
18    *Program.*

19    (ii) *If a borrower chooses to participate in the Mediated*  
20    *Mortgage Workout Program the requirements in paragraph (3)*  
21    *shall be deemed to be completed.*

22    ~~(2)~~

23    (3) *A mortgagee, beneficiary, or authorized agent shall contact*  
24    *the borrower in person or by telephone in order to assess the*  
25    *borrower's financial situation and explore options for the borrower*

1 to avoid foreclosure. During the initial contact, the mortgagee,  
2 beneficiary, or authorized agent shall advise the borrower that he  
3 or she has the right to request a subsequent meeting and, if  
4 requested, the mortgagee, beneficiary, or authorized agent shall  
5 schedule the meeting to occur within 14 days. The assessment of  
6 the borrower's financial situation and discussion of options may  
7 occur during the first contact, or at the subsequent meeting  
8 scheduled for that purpose. In either case, the borrower shall be  
9 provided the toll-free telephone number made available by the  
10 United States Department of Housing and Urban Development  
11 (HUD) to find a HUD-certified housing counseling agency. Any  
12 meeting may occur telephonically.

13 (b) A notice of default filed pursuant to Section 2924 shall  
14 include a declaration that the mortgagee, beneficiary, or authorized  
15 agent has contacted the borrower, has tried with due diligence to  
16 contact the borrower as required by this section, or that no contact  
17 was required pursuant to subdivision (h).

18 (c) If a mortgagee, trustee, beneficiary, or authorized agent had  
19 already filed the notice of default prior to the enactment of this  
20 section and did not subsequently file a notice of rescission, then  
21 the mortgagee, trustee, beneficiary, or authorized agent shall, as  
22 part of the notice of sale filed pursuant to Section 2924f, include  
23 a declaration that either:

24 (1) States that the borrower was contacted to assess the  
25 borrower's financial situation and to explore options for the  
26 borrower to avoid foreclosure.

27 (2) Lists the efforts made, if any, to contact the borrower in the  
28 event no contact was made.

29 (d) A mortgagee's, beneficiary's, or authorized agent's loss  
30 mitigation personnel may participate by telephone during any  
31 contact required by this section.

32 (e) For purposes of this section, a "borrower" shall include a  
33 mortgagor or trustor.

34 (f) A borrower may designate, with consent given in writing, a  
35 HUD-certified housing counseling agency, attorney, or other  
36 advisor to discuss with the mortgagee, beneficiary, or authorized  
37 agent, on the borrower's behalf, the borrowers financial situation  
38 and options for the borrower to avoid foreclosure. That contact  
39 made at the direction of the borrower shall satisfy the contact  
40 requirements of paragraph (2) of subdivision (a). Any loan

1 modification or workout plan offered at the meeting by the  
2 mortgagee, beneficiary, or authorized agent is subject to approval  
3 by the borrower.

4 (g) A notice of default may be filed pursuant to Section 2924  
5 when a mortgagee, beneficiary, or authorized agent has not  
6 contacted a borrower as required by paragraph (2) of subdivision  
7 (a) provided that the failure to contact the borrower occurred  
8 despite the due diligence of the mortgagee, beneficiary, or  
9 authorized agent. For purposes of this section, “due diligence”  
10 shall require and mean all of the following:

11 (1) A mortgagee, beneficiary, or authorized agent shall first  
12 attempt to contact a borrower by sending a first-class letter that  
13 includes the toll-free telephone number made available by HUD  
14 to find a HUD-certified housing counseling agency.

15 (2) (A) After the letter has been sent, the mortgagee,  
16 beneficiary, or authorized agent shall attempt to contact the  
17 borrower by telephone at least three times at different hours and  
18 on different days. Telephone calls shall be made to the primary  
19 telephone number on file.

20 (B) A mortgagee, beneficiary, or authorized agent may attempt  
21 to contact a borrower using an automated system to dial borrowers,  
22 provided that, if the telephone call is answered, the call is  
23 connected to a live representative of the mortgagee, beneficiary,  
24 or authorized agent.

25 (C) A mortgagee, beneficiary, or authorized agent satisfies the  
26 telephone contact requirements of this paragraph if it determines,  
27 after attempting contact pursuant to this paragraph, that the  
28 borrower’s primary telephone number and secondary telephone  
29 number or numbers on file, if any, have been disconnected.

30 (3) If the borrower does not respond within two weeks after the  
31 telephone call requirements of paragraph (2) have been satisfied,  
32 the mortgagee, beneficiary, or authorized agent shall then send a  
33 certified letter, with return receipt requested.

34 (4) The mortgagee, beneficiary, or authorized agent shall provide  
35 a means for the borrower to contact it in a timely manner, including  
36 a toll-free telephone number that will provide access to a live  
37 representative during business hours.

38 (5) The mortgagee, beneficiary, or authorized agent has posted  
39 a prominent link on the homepage of its Internet Web site, if any,  
40 to the following information:

1 (A) Options that may be available to borrowers who are unable  
2 to afford their mortgage payments and who wish to avoid  
3 foreclosure, and instructions to borrowers advising them on steps  
4 to take to explore those options.

5 (B) A list of financial documents borrowers should collect and  
6 be prepared to present to the mortgagee, beneficiary, or authorized  
7 agent when discussing options for avoiding foreclosure.

8 (C) A toll-free telephone number for borrowers who wish to  
9 discuss options for avoiding foreclosure with their mortgagee,  
10 beneficiary, or authorized agent.

11 (D) The toll-free telephone number made available by HUD to  
12 find a HUD-certified housing counseling agency.

13 (h) Subdivisions (a), (c), and (g) shall not apply if any of the  
14 following occurs:

15 (1) The borrower has surrendered the property as evidenced by  
16 either a letter confirming the surrender or delivery of the keys to  
17 the property to the mortgagee, trustee, beneficiary, or authorized  
18 agent.

19 (2) The borrower has contracted with an organization, person,  
20 or entity whose primary business is advising people who have  
21 decided to leave their homes on how to extend the foreclosure  
22 process and avoid their contractual obligations to mortgagees or  
23 beneficiaries.

24 (3) A case has been filed by the borrower under Chapter 7, 11,  
25 12, or 13 of Title 11 of the United States Code and the bankruptcy  
26 court has not entered an order closing or dismissing the bankruptcy  
27 case, or granting relief from a stay of foreclosure.

28 (4) *The borrower has completed participation in the Mediated*  
29 *Mortgage Workout Program and participation did not result in a*  
30 *mortgage loan modification, or other result mutually agreed to by*  
31 *the borrower and the mortgagee, trustee, beneficiary, or authorized*  
32 *agent.*

33 (i) This section shall apply only to mortgages or deeds of trust  
34 recorded from January 1, 2003, to December 31, 2007, inclusive,  
35 that are secured by owner-occupied residential real property  
36 containing no more than four dwelling units. For purposes of this  
37 subdivision, “owner-occupied” means that the residence is the  
38 principal residence of the borrower as indicated to the lender in  
39 loan documents.

(j) This section shall remain in effect only until January 1, 2013, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2013, deletes or extends that date.

**SECTION 1.**

*SEC. 2.* Article 1.7 (commencing with Section 2946) is added to Chapter 2 of Title 14 of Part 4 of Division 3 of the Civil Code, to read:

Article 1.7 Monitored Mortgage Workout Program

~~2946. This article shall apply to notices of default sent, pursuant to Section 2924, to an owner of a residential real estate property.~~

~~2946.1. In addition to the information required to be included in a notice of default sent, pursuant to Section 2924, to a borrower of residential real property subject to this chapter, the notice shall also include all of the following:~~

~~(a) (1) A separate notice, entitled the Monitored Mortgage Workout Program (MMW Program), advising the borrower of the right to participate in a monitored mortgage workout program to explore options for the borrower to avoid foreclosure. This notice and all of the documents required to be included with the notice of default shall be printed in large bold font and shall be printed in English, Spanish, Chinese, Tagalog, and Korean. This separate notice shall be sent to the borrower and to all other persons that have an ownership interest in the residential real property.~~

~~(2) This separate notice shall explain the requirements for participation in the MMW Program and shall advise the borrower of the procedures that are to be followed to make an election to participate in the program.~~

~~(3) This separate notice shall include the name, address, telephone number, facsimile number, and e-mail address of two or more local housing counseling agencies that are approved by the United States Department of Housing and Urban Development. The notice shall advise the borrower that private loan counselors are prohibited from collecting an advance fee.~~

~~(b) Three copies of an election form upon which the borrower may indicate his or her election to either participate in, or waive participation in, the MMW Program.~~

~~(c) Two separate envelopes, one addressed to the trustee and one addressed to the California Housing Finance Agency, for use~~

1 by the borrower to advise the trustee and the agency of the  
2 borrower's election to participate in the MMW Program.

3 2946.2. For purposes of this article:

4 (a) "Agency" means the California Housing Finance Agency.

5 (b) "Borrower" includes a mortgagor, trustor, or owner of the  
6 residential real estate property described in the notice of default  
7 sent pursuant to Section 2924.

8 (c) "Residential real estate property" means residential real  
9 property consisting of one- to four-family dwelling units.

10 (d) "Trustee" means the lender, mortgagee, trustee, beneficiary,  
11 or authorized agent that filed the notice of default authorized by  
12 Section 2924.

13 2946.3. (a) If the borrower elects to participate in the MMW  
14 Program, the borrower shall complete the election form and mail  
15 a copy of the election to the trustee and to the agency not later than  
16 thirty calendar days after receipt of the notice of default. The  
17 election form shall be sent by certified mail, return receipt  
18 requested.

19 (b) Once a borrower has elected to participate in the MMW  
20 Program no further action may be taken to exercise the power of  
21 sale until completion of all sessions under the MMW Program.

22 2946.4. (a) The agency shall compile a list of qualified  
23 monitors to facilitate the MMW Program and shall make this list  
24 available on the agency's Internet Web site.

25 (b) In order to be eligible to be placed on the list of qualified  
26 monitors, an individual shall have a minimum of four years  
27 experience in real estate litigation, including experience as a  
28 mediator, and shall have received formal training, or be able to  
29 document professional experience with federal loan modification  
30 guidelines.

31 (c) A monitor shall be compensated for his or her services in  
32 an amount not to exceed seven hundred fifty dollars (\$750). The  
33 compensation shall initially be paid by the trustee and, in the event  
34 that the mortgage loan is modified, the borrower shall reimburse  
35 the trustee for one-half of the total compensation paid to the  
36 monitor.

37 (d) The agency shall encourage the State Bar of California to  
38 allow mandatory continuing legal education program (MCLE)  
39 credits to those qualified monitors who are members of the  
40 California State Bar Association.

1     ~~2946.5. (a) Upon receipt of a borrower's election to participate~~  
2 ~~in the MMW Program the executive director of the agency shall~~  
3 ~~select an individual from a list of qualified monitors to act as the~~  
4 ~~monitor for the borrower and the trustee. The monitor shall contact~~  
5 ~~the parties within 15 days of his or her appointment to schedule~~  
6 ~~the first session of the monitored workout program.~~

7     ~~(b) The executive director of the agency shall notify the trustee~~  
8 ~~of the borrower's election to participate in the MMW Program~~  
9 ~~within 15 days of the selection of the monitor. The trustee shall~~  
10 ~~deposit a fee of two hundred fifty dollars (\$250) with the agency~~  
11 ~~within 10 days of the executive director's notification of the~~  
12 ~~borrower's election. In the event that the mortgage loan is modified,~~  
13 ~~as part of the modification plan, the borrower shall be required to~~  
14 ~~pay the lender one hundred twenty-five dollars (\$125) as partial~~  
15 ~~reimbursement of this fee.~~

16     ~~2946.6. The borrower is not eligible to participate in the MMW~~  
17 ~~Program until the borrower has established a trust account with~~  
18 ~~an FDIC-insured bank or credit union in an amount equal to 60~~  
19 ~~percent of the monthly payment established under the mortgage~~  
20 ~~agreement. The borrower shall make additional monthly deposits~~  
21 ~~equal to 60 percent of the monthly payment established under the~~  
22 ~~mortgage during the period that the borrower participates in the~~  
23 ~~program. If the borrower fails to establish and maintain this account~~  
24 ~~on or before the date of the first session of the MMW Program,~~  
25 ~~the borrower's election shall be deemed to be canceled and the~~  
26 ~~MMW Program shall be deemed to be completed for purposes of~~  
27 ~~subdivision (b) of Section 2946.3.~~

28     ~~2946.7. (a) The borrower shall bring all of the following~~  
29 ~~documents to the first scheduled session of the MMW Program:~~

30     ~~(1) Bank statements verifying the creation and maintenance of~~  
31 ~~the trust account required by Section 2946.6.~~

32     ~~(2) Tax returns filed for the prior tax year.~~

33     ~~(3) Payroll verification for the previous two months from all~~  
34 ~~family members of the borrower's household.~~

35     ~~(4) Return receipts verifying the borrower's notice of election~~  
36 ~~sent to the trustee and the agency as required by subdivision (a)~~  
37 ~~of Section 2946.3.~~

38     ~~(b) The borrower may be represented by a person with complete~~  
39 ~~authority to bind the borrower, as evidenced by the borrower's~~  
40 ~~written authorization for that person's representation.~~

1     ~~(e) If the monitor determines that the borrower has failed to~~  
2 ~~meaningfully participate in the MMW Program or has otherwise~~  
3 ~~failed to act in good faith, the monitor shall issue a final report to~~  
4 ~~all parties advising them that, based on the borrower's~~  
5 ~~noncompliance, the MMW Program is deemed to be completed~~  
6 ~~for purposes of subdivision (b) of Section 2946.3. If the borrower~~  
7 ~~is able to demonstrate his or her ability to continue with the~~  
8 ~~program within 10 days of the issuance of the final report, the~~  
9 ~~monitor may rescind the final report and continue with the MMW~~  
10 ~~Program sessions.~~

11     ~~2946.8. (a) The trustee may be represented by a person with~~  
12 ~~complete authority to bind the trustee, as evidenced by the trustee's~~  
13 ~~written authorization for that person's representation.~~

14     ~~(b) If the monitor determines that the trustee has failed to~~  
15 ~~meaningfully participate in the MMW Program, has rejected a~~  
16 ~~loan modification that satisfies loan modification guidelines~~  
17 ~~currently in effect in this state, or has otherwise failed to act in~~  
18 ~~good faith, the monitor shall notify the agency of this finding and~~  
19 ~~the borrower shall be authorized to initiate legal proceedings in~~  
20 ~~accordance with Section 2946.11. If the borrower initiates legal~~  
21 ~~proceedings in accordance with Section 2946.11, the monitor shall~~  
22 ~~prepare a loan modification proposal as required by Section~~  
23 ~~2946.10.~~

24     ~~2946.9. (a) The monitor shall use reasonable efforts to ensure~~  
25 ~~that each MMW Program is completed within 60 calendar days~~  
26 ~~of the monitor's appointment.~~

27     ~~(b) The monitor shall be responsible for facilitating~~  
28 ~~communications between the borrower and the trustee.~~

29     ~~(c) All reports prepared by the monitor in conjunction with the~~  
30 ~~MMW Program shall be subject to discovery under the Evidence~~  
31 ~~Code.~~

32     ~~(d) If the monitor fails to use reasonable efforts or fails to~~  
33 ~~participate in good faith, the parties shall promptly notify the~~  
34 ~~agency. If the agency determines that the monitor has failed to use~~  
35 ~~reasonable efforts or has failed to participate in good faith, the~~  
36 ~~agency shall appoint a new monitor to facilitate the MMW Program~~  
37 ~~sessions.~~

38     ~~2946.10. (a) At the conclusion of the MMW Program sessions,~~  
39 ~~the monitor shall prepare a loan modification proposal that may~~  
40 ~~include any or all of the following features:~~

1     ~~(1) An interest rate reduction for a fixed term of at least five~~  
2     ~~years.~~

3     ~~(2) An extension of the mortgage term, not to exceed 40 years~~  
4     ~~from the original date of the loan.~~

5     ~~(3) Deferral of a portion of the principal amount of the unpaid~~  
6     ~~principal balance until maturity of the loan.~~

7     ~~(4) Reduction of the principal balance.~~

8     ~~(5) Compliance with a federally mandated loan modification~~  
9     ~~program.~~

10    ~~(b) A copy of the loan modification proposal shall be distributed~~  
11    ~~to the parties for agreement. If the borrower does not accept the~~  
12    ~~loan modification proposal within 15 days of receipt, the~~  
13    ~~borrower's election to participate in the program shall be deemed~~  
14    ~~to be canceled and the program shall be deemed to be completed~~  
15    ~~for purposes of subdivision (b) of Section 2946.3. If the borrower~~  
16    ~~accepts the proposal, the terms of the proposal shall have~~  
17    ~~immediate effect.~~

18    ~~2946.11. If the trustee rejects the monitor's loan modification~~  
19    ~~proposal or if the monitor has made a determination that the trustee~~  
20    ~~has failed to meaningfully participate in the MMW Program, or~~  
21    ~~has failed to act in good faith the borrower may institute an action~~  
22    ~~in superior court seeking to enforce the monitor's loan modification~~  
23    ~~proposal. The court shall enforce the terms of the loan modification~~  
24    ~~proposal in an expedited proceeding, provided that the borrower's~~  
25    ~~trust account, as required by Section 2946.6, remains current and~~  
26    ~~the borrower has verified that his or her income is substantially~~  
27    ~~the same as it was during the MMW Program sessions. The court~~  
28    ~~shall award attorney's fees and costs to the prevailing party.~~

29    ~~2946.12. If the borrower does not accept the loan modification~~  
30    ~~proposal, the trustee may proceed with the foreclosure proceedings~~  
31    ~~authorized by this chapter.~~

32    ~~2946. This article shall apply to loans secured by residential~~  
33    ~~real property used as the primary residence of the borrower and~~  
34    ~~for which a notice of default has been filed pursuant to Section~~  
35    ~~2924.~~

36    ~~2946.1. (a) In addition to the information required to be~~  
37    ~~included in a notice of default sent, pursuant to Section 2924, to~~  
38    ~~a borrower of residential real property subject to this chapter, the~~  
39    ~~notice shall also include all of the following:~~

1     (1) A separate notice, entitled “Opportunity to Meet Face to  
2     Face with Your Lender/Servicer and a Neutral Professional in a  
3     Mediated Mortgage Workout Program,” advising the borrower  
4     of his or her right to participate in a Mediated Mortgage Workout  
5     Program (MMW Program) to explore options for the borrower to  
6     avoid foreclosure. This notice and all of the documents required  
7     to be included with the notice of default shall be printed in large,  
8     bold font and shall be printed in English, Spanish, Chinese,  
9     Tagalog, and Korean. This separate notice shall be sent to the  
10    borrower and to all other persons that have an ownership interest  
11    in the residential real property. This notice shall be recorded along  
12    with the notice of default, in the office of the appropriate county  
13    recorder.

14    (2) This separate notice shall explain the requirements for  
15    participation in the MMW Program and shall advise the borrower  
16    of the procedures that are to be followed to make an election to  
17    participate in the program.

18    (3) This separate notice shall include the name, address,  
19    telephone number, facsimile number, and e-mail address of the  
20    mortgagee, trustee, beneficiary, or authorized agent, and the  
21    administrator of the MMW Program, as well as two or more local  
22    housing counseling agencies that are approved by the United States  
23    Department of Housing and Urban Development. The notice shall  
24    advise the borrower that loan counselors are prohibited from  
25    collecting an advance fee.

26    (b) Three copies of an election form, in a form as developed  
27    and approved by the administrator of the MMW Program, upon  
28    which the borrower may indicate his or her election to either  
29    participate in, or waive participation in, the MMW Program.

30    (c) Two separate envelopes, one addressed to the mortgagee,  
31    trustee, beneficiary, or authorized agent and one addressed to the  
32    administrator of the MMW Program, for use by the borrower to  
33    advise the mortgagee, trustee, beneficiary, or authorized agent  
34    and the administrator of the borrower’s election to participate in  
35    the MMW Program.

36    2946.2. For purposes of this article:

37    (a) “Administrator” means the administrator of the MMW  
38    Program.

1     (b) “Borrower” includes a mortgagor, trustor, or owner of the  
2     residential real estate property described in the notice of default  
3     sent pursuant to Section 2924.

4     (c) “Meaningful participation” includes all of the following,

5         (1) Attendance at all mediation sessions.

6         (2) Presentation of all required documents.

7         (3) The offering and acceptance of a loan modification or other  
8     mutually acceptable outcome between the mortgagee, trustee,  
9     beneficiary, or authorized agent and borrower when, based on the  
10    documentation, is in the best interest of the parties.

11    (d) “Residential real estate property” means residential real  
12    property consisting of one- to four-family dwelling units.

13    2946.3. (a) If the borrower elects to participate in the MMW  
14    Program, the borrower shall complete the election form and mail  
15    a copy of the election to the mortgagee, trustee, beneficiary, or  
16    authorized agent and to the administrator not later than 30  
17    calendar days after receipt of the notice of default. The election  
18    form shall be sent by certified mail, return receipt requested.

19    (b) The administrator may allow for the election to participate  
20    in the MMW Program through an Internet Web site, e-mail form,  
21    or telephonic means. The administrator shall maintain a platform  
22    that responsibly records and gives the borrower a receipt of  
23    election to participate under recognizable standards for recording  
24    and storing critical electronic information.

25    (c) Once a borrower has elected to participate in the MMW  
26    Program, the timeliness set forth in Section 2924 shall be tolled  
27    and no further action may be taken to exercise the power of sale  
28    until the completion of the MMW Program, as evidenced by the  
29    mediator’s final report as described in Section 2946.12.

30    2946.4. (a) The administrator of the MMW Program shall be  
31    appointed by the Governor and confirmed by the Senate.

32    (b) The administrator shall have the authority to do the following  
33    in order to carry out this article:

34         (1) Implement rules and standards for choosing qualified  
35         mediators.

36         (2) Implement rules and standards for the removal of mediators  
37         for good cause.

38         (3) Develop standards for forms and reports, as may be required  
39         to implement the MMW Program.

1     (4) *Require or design additional training for mediators to meet*  
2 *the goals of this article.*

3     2946.5. (a) *A mediator shall be compensated for his or her*  
4 *services at the hourly rate of one hundred fifty dollars (\$150) and*  
5 *in an amount not to exceed seven hundred fifty dollars (\$750), up*  
6 *to a maximum of two cases per day. The compensation shall*  
7 *initially be paid by the mortgagee, trustee, beneficiary, or*  
8 *authorized agent and, in the event that the mortgage loan is*  
9 *modified, the borrower shall reimburse the mortgagee, trustee,*  
10 *beneficiary, or authorized agent for one-half of the total*  
11 *compensation paid to the mediator. The borrower's share of the*  
12 *mediator's fees may be added to the principal balance of the loan*  
13 *if requested by the borrower. In the event that the parties' efforts*  
14 *to modify the loan fail and the property is sold, the mortgagee,*  
15 *trustee, beneficiary, or authorized agent, alone, shall be*  
16 *responsible for the expense of the mediator's fees.*

17     (b) *The administrator shall encourage the State Bar of*  
18 *California to allow mandatory continuing legal education program*  
19 *(MCLE) credits to those qualified mediators who are members of*  
20 *the California State Bar Association for completion of the training*  
21 *required to participate in this program.*

22     2946.6. (a) *Upon receipt of a borrower's election to participate*  
23 *in the MMW Program the administrator shall select an individual*  
24 *from a list of qualified mediators to act as the mediator for the*  
25 *borrower and the mortgagee, trustee, beneficiary, or authorized*  
26 *agent. The mediator shall contact the parties within 15 days of his*  
27 *or her appointment to schedule the first session of the MMW*  
28 *Program.*

29     (b) (1) *The administrator shall notify the mortgagee, trustee,*  
30 *beneficiary, or authorized agent of the borrower's election to*  
31 *participate in the MMW Program within 15 days of receipt of the*  
32 *borrower's election to participate in the program. The mortgagee,*  
33 *trustee, beneficiary, or authorized agent shall deposit a fee of five*  
34 *hundred (\$500) with the administrator within 10 days of the*  
35 *administrator's notification of the borrower's election. In the event*  
36 *that the mortgage loan is modified, as part of the modification*  
37 *plan, the borrower shall reimburse the mortgagee, trustee,*  
38 *beneficiary, or authorized agent two hundred fifty dollars (\$250)*  
39 *as partial reimbursement of this fee according to the same terms*  
40 *as set forth in subdivision (a) of Section 2946.5. In the event that*

1 *the parties' efforts to modify the loan fail and the property is sold*  
2 *by the mortgagee, trustee, beneficiary, or authorized agent, the*  
3 *mortgagee, trustee, beneficiary or authorized agent, alone, shall*  
4 *be responsible for the program fee.*

5 *(2) Failure of the mortgagee, trustee, beneficiary, or authorized*  
6 *agent to deposit the fee within 10 days of the administrator's*  
7 *notification of the borrower's election to participate shall result*  
8 *in a stay of foreclosure proceedings and delay of MMW Program*  
9 *until such time as the fee is deposited with an additional penalty*  
10 *of one hundred dollars (\$100) per day that the fee was not*  
11 *deposited past the deadline.*

12 *2946.7. Any borrower who elects to participate in the MMW*  
13 *Program, after a notice of default has been filed, shall establish*  
14 *an account, or use an existing account with an FDIC-insured bank*  
15 *or credit union for the deposit of 50 percent of the current*  
16 *mortgage payment in that account every month during participation*  
17 *in the MMW Program. The first monthly deposit shall be made*  
18 *before the first session of the MMW Program. If the borrower fails*  
19 *to substantially comply with these terms, the borrower's election*  
20 *shall be deemed to be canceled and the MMW Program shall be*  
21 *deemed to be completed for purposes of subdivision (c) of Section*  
22 *2946.3. Under no circumstances shall the mortgagee, trustee,*  
23 *beneficiary, or authorized agent have any right to or interest in*  
24 *the funds or funds that may accrue in the borrower's account,*  
25 *which shall, at all times, remain the property of the borrower.*

26 *2946.8. A borrower who participates in the MMW Program*  
27 *shall not be required, as a condition of participation, or as a*  
28 *condition of acceptance of a modification to waive any rights and*  
29 *remedies that may otherwise be available.*

30 *2946.9. The borrower and mortgagee, trustee, beneficiary, or*  
31 *authorized agent shall engage in meaningful participation during*  
32 *the MMW Program.*

33 *2946.10. (a) The borrower shall bring all of the following*  
34 *documents to the first scheduled session of the MMW Program:*

35 *(1) Bank statements verifying the creation and maintenance of*  
36 *the account required by Section 2946.7.*

37 *(2) Tax returns filed for the prior tax year.*

38 *(3) Payroll or other income verification for the previous two*  
39 *months.*

1     ***(b) The mortgagee, trustee, beneficiary, or authorized agent***  
2     ***shall bring all of the following documents to the first scheduled***  
3     ***session of the MMW Program:***

4         ***(1) The applicable Pooling and Service Agreement, if any.***

5         ***(2) The loan application, loan origination documents, appraisal,***  
6         ***and payment history.***

7         ***(3) The original note and assignments or certificate regarding***  
8         ***a lost document.***

9         ***(4) Documentary evidence of current ownership or chain of***  
10        ***custody of the mortgage note.***

11        ***(5) The net present value formula that the mortgagee, trustee,***  
12        ***beneficiary, or authorized agent uses.***

13     ***(c) Both borrower and mortgagee, trustee, beneficiary, or***  
14     ***authorized agent shall attend the MMW Program sessions in***  
15     ***person. In the event of exigent circumstances, the mediator may***  
16     ***allow either party to be represented by a person with a power of***  
17     ***attorney or other written authorization to represent and bind such***  
18     ***party. In addition, each party may be represented by an attorney***  
19     ***or housing counselor. However, no attorney, other representative,***  
20     ***or loan counselor appearing on behalf of the borrower may receive***  
21     ***an advance fee for any services rendered in connection with the***  
22     ***MMW Program.***

23     ***(d) No request for a continuance of a MMW Program session***  
24     ***may be granted, except upon showing of extraordinary***  
25     ***circumstances. A request shall be made to the presiding mediator***  
26     ***detailing the extraordinary circumstances that require the***  
27     ***continuance.***

28     ***(e) The borrower and mortgagee, trustee, beneficiary, or***  
29     ***authorized agent shall endeavor to agree on the terms of a***  
30     ***reasonable loan modification that satisfies the FDIC net present***  
31     ***value test or a comparable net present value test. The parties shall***  
32     ***be guided by federal and other generally accepted loan***  
33     ***modification methodologies which include any or all of the***  
34     ***following features:***

35         ***(1) An interest rate reduction for a fixed term of at least five***  
36         ***years.***

37         ***(2) An extension of the mortgage term, not to exceed 40 years***  
38         ***from the original date of the loan.***

39         ***(3) Deferral of a portion of the principal amount of the unpaid***  
40         ***principal balance until maturity of the loan.***

1     (4) *Reduction of the principal balance.*

2     (5) *Compliance with a federally mandated loan modification*  
3 *program.*

4     (6) *Other alternatives that may reduce the borrower's monthly*  
5 *payment to 31 percent or less of their debt-to-income ratio and*  
6 *that are designed to meet long-term sustainability for the borrower.*

7     (7) *Nothing in this section shall be construed to prevent a*  
8 *creditor from offering or accepting alternatives in writing to*  
9 *foreclosure, such as a short sale or deed-in-lieu of foreclosure,*  
10 *but only if the borrower requests these alternatives, rejects a loan*  
11 *modification offered pursuant to this section, or does not qualify*  
12 *for a loan modification pursuant to this section.*

13     (f) *If a borrower has failed to meaningfully participate in the*  
14 *MMW Program the MMW Program shall be deemed to be*  
15 *completed for purposes of subdivision (c) of Section 2946.3. If the*  
16 *borrower cures the noncompliance to the satisfaction of the*  
17 *mediator within 10 days of notice of failure to comply the mediator*  
18 *shall rescind suspension of the mediation sessions and continue*  
19 *with MMW Program.*

20     (g) *If a mortgagee, trustee, beneficiary, or authorized agent*  
21 *fails to meaningfully participate in the MMW Program, the MMW*  
22 *Program shall be suspended. During the suspension of the program*  
23 *for failure to meaningfully participate, the mortgagee, trustee,*  
24 *beneficiary, or authorized agent may not pursue further foreclosure*  
25 *actions until the time that the mortgagee, trustee, beneficiary, or*  
26 *authorized agent cures the noncompliance.*

27     2946.11. *The mediator shall use reasonable efforts to ensure*  
28 *that each MMW Program is completed within 60 calendar days*  
29 *of the mediator's appointment.*

30     2946.12. (a) *The mediator's final report shall describe the*  
31 *basic terms of the loan at issue, including the principal balance*  
32 *and arrearages. The final report shall state whether the borrower*  
33 *was offered a loan modification meeting the conditions of*  
34 *subdivision (e) of Section 2946.10, or any other mutually*  
35 *acceptable resolution.*

36     (b) *The final report shall be sent by first-class mail or via*  
37 *electronic means to the borrower, mortgagee, trustee, beneficiary,*  
38 *or authorized agent, and the administrator and shall include a*  
39 *statement that the MMW Program has been completed.*

1     2946.13. (a) *The administrator shall report quarterly to the*  
2 *Legislature regarding the performance of the MMW Program,*  
3 *that shall include the following information:*

4     (1) *The number of homeowners who attend mediation prior to*  
5 *notice of default.*

6     (2) *The number of homeowners who attend mediation after*  
7 *receiving a notice of default.*

8     (3) *The number of mediations suspended because of lack of*  
9 *meaningful participation by the borrower.*

10    (4) *The number of mediations suspended because of lack of*  
11 *meaningful participation on the part of mortgagee, trustee,*  
12 *beneficiary, or authorized agents.*

13    (5) *The number of mediations that result in a loan modification.*

14    (6) *The number of mediations that result in a solution other*  
15 *than a loan modification.*

16    (b) *The servicers participating in the MMW Program shall post*  
17 *public data reports on a quarterly basis on their Internet Web sites*  
18 *detailing the following:*

19    (1) *The number of borrower's loans that have been modified*  
20 *through the MMW Program and the type of modification.*

21    (2) *The final disposition of borrowers' loans that were in the*  
22 *MMW Program but not modified.*

23    (3) *The final disposition of borrowers' loans that did not*  
24 *participate in the MMW Program.*

25    (4) *Projections of loans eligible for federal loan modification*  
26 *programs.*

27    (5) *Information regarding loans in a portfolio or serviced for*  
28 *others categorized by product type, for example prime, subprime,*  
29 *and nontraditional, for the following:*

30    (A) *The type of loans in portfolio serviced by others, delineated*  
31 *by prime, subprime, and nontraditional.*

32    (B) *The loans in a portfolio or serviced by others that are*  
33 *securitized.*

34    (C) *The number of home retention actions.*

35    (D) *Re-Default Rates for portfolio loans and loans serviced for*  
36 *others.*

37    (E) *The default rates for portfolio loans and loans serviced for*  
38 *others.*

39    (F) *The default rates of loans modified in 2008 by changes in*  
40 *payment.*

1 (G) Newly initiated home retention actions compared with  
2 foreclosure actions.

3 (H) Completed foreclosures and other home forfeiture actions.

4 (I) The overall portfolio performance by percentage.

5 (J) The performance of government-guaranteed loans, by  
6 percentage.

7 (K) The performance of GSE loans, by percentage.

8 (L) Seriously delinquent mortgages, by percentage.

9 (M) HAMP Actions by investor and risk category.

10 (N) Changes in loan terms made by modifications made during  
11 2009.

12 (O) Changes in monthly principal and interest payments owing  
13 to modification, by the number of modifications.

14 (P) The number of modified loans, 30 or more days delinquent.

15 (Q) The number of modified loans, 60 or more days delinquent.

16 (R) The number of modified loans, 90 or more days delinquent.

17 2946.14. A mortgagee, trustee, beneficiary, or authorized agent  
18 shall not report negative credit information about a consumer who  
19 has received a loan modification to a credit reporting agency if  
20 the consumer has successfully participated in the MMW Program  
21 and has achieved a mortgage loan modification.

22 2946.15. A consumer shall not be responsible for fees, late  
23 payment charges, or other monetary penalties during the time  
24 when the MMW Program or final report is pending.

25 ~~SEC. 2.~~

26 SEC. 3. This act is an urgency statute necessary for the  
27 immediate preservation of the public peace, health, or safety within  
28 the meaning of Article IV of the Constitution and shall go into  
29 immediate effect. The facts constituting the necessity are:

30 In order to stabilize and protect state and local economies and  
31 the housing market at the earliest possible time, it is necessary for  
32 this act to take effect immediately.